1890-033 Chancery Causes: David Meridith vs. James C. Scott
Lee Co.

CA Contract Dispute
T-Property

To the Hon. H.S.K. Morison Judge of the Circuit Court of Lee County Virginia:

Your orator, David Meredith who humbly complaining, would respectfully, represent, that he is the owner in fee of a tract of land situated on Powells Mountain in said County, whereon he now and for several years last past has resided. Several months ago he sold of the timber then standing upon said land, to one James E. Scott, 77. poplar timber trees at the price of $3.00 each = $231. and 43 poplar timber trees at the price of $1.75 each = $75.25. 4 poplar timber trees at the price of $1.30 each = $5.20 and some loose logs for $5.00. making in all the sum of $316.45.

By the terms of the contract said Scott, was to cut and haul, the same to a suitable place to be sawed into boards and lumber. When thus collected they were then to be paid for, and until paid for were to be held by your orator as a security for his money

In so much so that when said Scott offered to execute his note for the same your orator refused telling him he preferred that the logs should stand for themselves until paid for. Many of these logs have been cut down, and into sawed logs and removed to the saw yard, some so cut have not been yet removed from the land and some of the trees are yet uncut those cut and now on the yard are being sawed into lumber, and the said Scott is endeavoring to sell and convert into money, the others he threatens to remove and saw up and sell.

But strange to say the said Scott declares that he will not pay your orator for said logs, and lays claim to them as his own property, basing his claim upon the following facts One Wm Leslie — made a quit claim deed to Claiborne Merideth for this land some ten years ago but he had no pretense to ownership said Claiborne, at the time he took said deed and for 30

years before, had been the tenant of H. S. Kane, on the same place - Soon after this pretended quit claim deed said Claiborne Meriedet removed from the land and remained away some 5 or six years, but not until he returned from his ~~before leaving~~ sold his claim to one Isaac Wisley and this is the title Scott claims to own. Your orator purchased these lands about ten years ago from the Heirs at law of one H. S. Kane, who had had title and possession for 50 years, and the claim of the said Scott is without the semblance of validity - The said Scott ~~when he~~ purchased his pretended title after he had purchased said timber and your orator believes he made said purch of the pretended title to avoid the payment of the timber claim - Your orator is ~~believed~~ informed and believes that said Scott is wholly insolvent and financially unable to pay for said timber and said removed or sold Your orator will loose his debt

the contract was that the logs should stand bound for themselves and be paid for as delivered on the yard.

To specifically perform this contract, and enforce said lien upon said logs and sawed lumber now on the yard near said land when they were to be paid for, and to sell the same or so much thereof as may be necessary to pay the same is the object of this Bill.

Your orator therefore prays that James C. Scott be made a party defendant to this bill and answer its allegations upon oath, that he be enjoined and inhibited from further sawing or removing or selling said logs on the said Sawyer land, or cutting or removing those already cut upon said land, and not yet removed; that the same or so many be sold as will pay the same; or said Scott's further failing to execute his part of

said contract. Your orator having fully complied in every particular with his part of said contract. To effect which he further prays that a receiver be appointed to take charge of and make sale of said logs and hold the proceeds of sale subject to the future order of this Court and for all other further and general relief May seem issue &c. Your orator, omitted to state that he has a judgement & execution against said Scott for a small debt returned no property found on he is informed there are many others of a like character against him and hence he believes him insolvent as he has no real estate known to your orator &c.

A. L. Prichard
P. Q.

Virginia Scott County to wit
This day David Mendell personally appeared before the undersigned and made oath that the facts set forth in the foregoing bill so far as made upon his own knowledge are true & so far as made upon information derived from others he believes them to be true Given under my hand this Feb. 12th 1887.

S H Taylor Clk

Delfs
fee 6.70
Sol .50
$7.20

Defts
fee 1.81.

P

David Meredith

v. } Bill Chy

James C. Scott

Injunction granted pursuant to the prayer of the bill enjoining the said Scott from selling or removing said logs from the lumber yard where they now are until ~~the fourth Order~~ of this court but this injunction is not to be operative until the pltff or some one for him & - - - - - bond with good personal security before the clerk of this court in the penalty of $650.00 conditioned to pay all costs & damages that may accrue by reason of this injunction & also conditioned to the law directs.

H. H. Monican
Feby 12th 1889

To the Clerk of the circuit court of ~~Scott~~ County, Va.

1889 1st March Rules Rec'd
fed 3pm Executed & D. N.
" 2nd March Rules D.
Nisi Confd, Ans
Deft filed
1890, Apr. Decree
final

To the Honorable A. S. K. Morison Judge of the Circuit Court of Lee County Virginia

The demurrer and answer of James C. Scott, to a bill exhibited against him, in this Honorable Court by David Meridith.

This respondent says complainants bill is not sufficient to call upon him to answer in this Honorable Court, but that there is good cause of demurrer thereto and he accordingly demurs, and prays Judgement of his said demurrer &c.

And not waiving his said demurrer but relying and insisting thereon should other and further answer be required of him, answering he says that, he made a contract with the said David Meridith for a lot of Poplar trees standing on land claimed by said Meridith, these trees were measured inspected and branded at the time of said Trade, and of said trees there were 56. at the price of $3.00 per tree amounting to the sum of $168.00, and 44 trees at $1.75 per tree amounting to the sum of $77.00, and a lot of dead timber and 1 green tree standing inside of field at the price of $5.00 aggregating a total of $250.00 which was to be paid when said trees were cut sawed and collected together on the saw Mill yard. Under this contract respondent went to work cutting said trees sawing them into logs and removing them to his yard, and while so employed with his hands respondent was informed that a very large part of said trees so sold to him by said Meridith was on a

tract of land before that time sold and conveyed to one Wm. D. Jones by one A. J. Pendleton, and respondent was notified by the agent of said Jones not to remove any more of said logs already cut and not to cut any more of said trees. Your respondent at once communicated these facts to the said Meredith, and it was agreed by said Meredith that respondent should go on other lands of the said Meredith, for the remainder of said timber. The said Meredith and your respondent then went on to what said Meredith then claimed to be his lands and outside of the said Pendleton or Jones survey, and inspected marked and branded trees, which together with those theretofore cut on the land claimed by Jones, made exactly 100 trees.

Respondent will now, show your Honor that at the time he was notified by said Jones agent that he was cutting and removing timber from said Jones' land that he had already cut and removed about 29,000 feet of logs, and it was agreed between this respondent and said Meredith that said logs should follow the title of the land from which they came and that respondent should pay the price thereof to whomsoever was vested with the legal title to the land from which said trees were taken. This matter has not yet been settled and respondent does not know who is really the better owner. Respondent will further show your Honor that time is cut and sawed into

saw stocks some 8 or 10 trees missing some 25 or 30 fine saw logs that have not yet been removed from said land. At the time said Meridith and respondent inspected and branded the last named trees respondent had never seen the Jones or Pendleton land run out or surveyed and he did not know the boundaries of said tract nor does he believe that said Meridith knew them but since that time said tract has been surveyed and the lines thereof ascertained as claimed by said Jones. and said lines as so run includes some 65 or 70 of the trees sold to respondent by said Meridith.. and of this lot of 30 or 35 trees outside of said Pendleton or Jones survey there is 15 of the best logs that have not yet been hauled to the saw yard.

Respondent says that it is true that he has refused to pay for said trees, to said David Meridith, because as above stated one Wm D Jones is asserting title to the land from which said trees were cut and by the subsequent agreement above recited between respondent and said Meridith, respondent was not to pay for them until it was fully and legally determined from whose land they were cut. Respondent will also show your honor that one J B H. Mills who claims to be the owner under the Claiborne Meridith or Wm Collier title, claims all the land from which all of said trees were cut and under said title said Mills claims that he is entitled to said trees and the logs

hauled through. Many of said logs have been sawed into boards or planks, and are now stacked up on the yard in the Wild Cat Valley. There is 75,000 to 80,000 feet so sawed and stacked. Respondent did at one time claim an undivided moiety of said
said land under the Claiborne Meredith title but he sold his said Moiety to said Mills and in said sale reserved one Moiety of said timber logs and plank. Respondent was also the owner of ~~the title to~~ said land under title derived by deed from Harvey Young.

Respondent denies that said David Meredith is the owner of said land in fee, he denies that he has good title thereto, or to any part of the land from which said trees were cut, respondent supposes that it is true that said Meredith claims a boundary of land on the side of Powells Mountain under some kind of title derived from the heirs of Henry Shane. but he denies that the boundary purchased from said Shane covers said land from which said trees were cut. he further denies that said Shane heirs or thereof other in his lifetime had title to said land or any part thereof and he demands full legal proof of each and every allegation of title made by said complainant. It is true that respondent purchased said Claiborne Meredith title after he had contracted with said David for said trees but it is not true that he purchased the same to avoid paying for said timber but on the contrary he purchased it believing it, true as he now

believes it to be a better title that the said Davis's. The assertion that respondent is insolvent and financially unable to pay for said trees is wholly gratuitous and entirely without foundation in truth. Respondent is not a rich man it is true, but he is fully able to meet his obligation with Mr Meredith and he is ready now or at any time to meet it should it be ascertained or should Mr Meredith show that he is entitled to the pay for said trees Respondent says it is not true that he offered to execute his note to said Meredith for said trees and the same was refused but on the contrary said Meredith wanted respondent to execute his note for same which respondent refused to do until the title thereto was settled. Respondent does not want a receiver appointed to take charge of or sell said timber. he desires to handle it himself. and if the said Meredith shows that he is the owner of the land from which said trees were cut he will get his money according to contract, as respondent will pay him for same as soon as he shows he is entitled to it. If said complainants title is good to all of said timber sold to respondent and by respondent removed including the 15 logs in the woods and not yet hauled and excluding the 30 or 36 logs still lying on the home land respondent will then owe said Meredith exactly $188.00. which as before stated he is ready to pay him whenever his title thereto is shown to be good. Respondent

admits that it is true that said Meridith did obtain a Judgement against him for a small sum and it may be true that respondent still owes him a small sum on the same, but if said Judgement and execution has been returned by the officer no property found it is unknown to respondent respondent has paid various sums on the same and has tried two or three times to settle the same but cannot get the said Meridith to give him credit for the sums he has paid on it to the Constable He has property plenty to satisfay said execution, and is really to pay some at any time he can get a fair settlement Therof.

And now having answered Complainants bill as fully as he is advised it is material and here expressly denying every allegation not herein before denied or confessed and avoided respondent prays that said injuction be dissolved and he hence dismissed with his costs.

Duncan & Mathews Attys
For Defendant.

James C. Scott
ads
Answer
David Meredith

Filed at 2nd March
Rules 1889.
J. A. G. Hyatt c.c.

David Merriott
v
J. C. Scott } Trespass

On motion of the pltff and by consent of the defendant this cause is dismissed by the pltff no costs to be taxed. Across the commission from the docket

David. Meiredith

vs } Decree
Final

Jas. C. Scott

March 7. 1889

Entered Chcy O.B.
page 250.
April 1st 1890.
J. A. Hyatt C

Entered this
Apr 1 1890
H.L.M.

Know all men by these presents that we David Meridith and W. J. H. Ward are held and firmly bound unto the Commonwealth of Virginia in the just and full sum of Six hundred & fifty Dollars, and for the prompt payment thereof well and truly to be made unto the said Commonwealth, we each bind ourselves heirs &c and we as to this bond hereby waive our homestead exemption as to this bond, witness our hands and seals this 20th Febry 1889.

The Condition of the above obligation is such that whereas an injunction was granted the the above bound David Meridith by the circuit court for Lee County, in vacation, restraing the the Defendant James E. Scott from selling or removing the logs in the bill and proceedings mentioned from the lumber yard where they now are, until the further order of the Court in this Cause

Now therefore should the said David Meridith or some one for him pay all costs and damages which may be decreed against him by the future orders of the Court, should this this injunction be dissolved, then this obligation to be void otherwise to remain in full force and virtue.

his
David Meridith (Seal)
mark
W. J. K. Ward (Seal)

David Meridith
Bond
vs
James K. Scott
Filed Feby 20th 1887.
J. C. Hesketh Clerk

The Commonwealth of Virginia.

To The Sheriff Of Lee County, Greeting:

We Command You to Summon J. C. Scott

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in March next, being rule day to answer a bill in Chancery exhibited in our said Court against him by David Merideth

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse. This 20th day of February 18 89, in the 113 year of the Commonwealth.

J. A. G. Hyatt Clerk.

A Copy Teste

Bond with security having been given and filed in obedience to the order granting the injunction. The Defendant James C. Scott is restrained and enjoined from selling or removing the logs from the lumber yard where they now are until the future order of the Court.

Teste J. A. L. Sayatt C.C.

A.L.D.

David Meredeth
vs
James C. Scott

Filed 1st March Rules 1859

Executed by delivering each Office copy with the Summons to James C. Scott

R. D. Hanna
Sheriff D.C.C.

Fees